

Finally, having carefully considered all the relevant evidence we were in no doubt that in all the circumstances the trial judges were entitled to conclude, as they did, that the defence of diminished responsibility had not on a balance of probabilities been established. We were also satisfied that the trial judges were entitled to conclude, assuming that the appellant was suffering from an "abnormality of mind" from one of the causes specified in Exception 7 of section 300 of the Penal Code, that the defence had not on a balance of probabilities established that the abnormality was such as substantially impaired the mental responsibility of the appellant for his act in causing the death of the deceased.

For all these reasons we dismissed the appeal.

Appeal dismissed.

Solicitors: *Amarjit, Rubin & Partners.*

FOUR SEAS COMMUNICATIONS BANK LTD. v. ENG CHUAN & CO. & ORS.

[C.A. (Kulasekaram, Chua & Rajah JJ.) July 4, 1980]

[Singapore — Civil Appeal No. 4 of 1980]

Landlord and Tenant — Rent-controlled premises — Claim for recovery of possession — No tenancy by estoppel — Misdirection by learned appeal judge — Control of Rent Act (Cap. 266).

The plaintiffs/appellants in this case were owners of a rent-controlled premises known as 61, 61A and 61B Chulia Street, Singapore. They claimed for recovery of possession of the said premises from the defendants/respondents who bought the premises in 1964 subject to the existing tenancy of Eng Chuan & Company.

The premises had, sometime in 1946 or 1947, been let by the then owners to the firm of Eng Chuan & Co., a sole proprietorship. The tenancy was taken in the name of the firm. At the time of letting one Lee Siew Pan was the sole proprietor of the firm. In 1951, four other persons were added as partners. In 1954 the said Lee and two others withdrew from the partnership. The three remaining partners continued operating the firm until January 1977 when the partnership was struck off the Register of Business Names. However, the defendants continued to occupy the premises.

By a notice to quit of January 29, 1976 and served at the premises the tenancy was terminated on February 29, 1976. The plaintiffs claimed that the defendants as from March 1, 1976 were trespassers. The learned District Judge allowed judgment against the defendants and ordered them to deliver vacant possession of the premises to the plaintiffs on or before September 15, 1979. The said judgment was reversed by the High Court. The plaintiff appealed.

Held, allowing the appeal: (1) there was no evidence that the plaintiffs/appellants had entered into a new agreement creating a new tenancy agreement in favour of the three remaining partners of Eng Chuan & Co. in 1964;

(2) the defendants/respondents had not pleaded estoppel at the trial and as this defence were not available to them the learned appeal judge misdirected himself when he dealt with the appeal as if such a plea had been expressly pleaded by the defendants/respondents.

Case referred to:-

- (1) *South Union Co. Ltd. v. Seng Hin Ltd.* [1973] 1 M.L.J. 39.

CIVIL APPEAL.

Kirpal Singh for the appellants.

L.A.J. Smith for the respondents.

Cur. Adv. Vult.

Rajah J. (delivering the judgment of the Court):

- A This is an appeal against the judgment of D'Cotta J. wherein he allowed the appeal of the appellants in District Court Appeal No. 36 of 1979, the defendants in D.C. Summons No. 1577 of 1977.

- B In the D.C. Summons the plaintiffs therein (appellants in this appeal) as owners of the rent-controlled premises known as 61, 61A and 61B Chulia Street, Singapore (the premises), claimed recovery of possession of same from the defendants (respondents in this appeal), having bought the premises in 1964 subject to the existing tenancy of Eng Chuan & Co.

- C The premises had, sometime in 1946 or 1947, been let by the then owners to the firm of Eng Chuan & Co., a sole proprietorship. The tenancy was taken in the name of the firm. At the time of the letting one Lee Siew Pan was the sole proprietor of the firm. In March 1951 four other persons were added as partners. In January 1954, the said Lee Siew Pan and two others withdrew from the partnership. The three remaining partners continued operating the firm until January 1977 when the partnership was struck off the Register of Business Names. However, the defendants continued to occupy the premises.

- D By a notice to quit dated January 29, 1976, and served at the premises the tenancy was terminated on February 29, 1976. The plaintiffs claimed that the defendants as from March 1, 1976 were trespassers and asked for judgment against them for recovery of the premises. The defendants did not dispute ownership of the premises by the plaintiffs but said that they were not trespassers. They admitted service of the notice to quit but denied that the tenancy had been terminated, as claimed, on February 29, 1976.

- E Defendants contended that (1) the plaintiffs had accepted them as tenants as they had openly occupied the premises and (2) continued occupation by the firm of the premises for the past 38 years gave them protection under the Control of Rent Act (Cap. 266).

- F The learned District Judge rejected these contentions and held (1) that the tenancy taken in the name of the firm of Eng Chuan & Co. was vested in Lee Siew Pan, (2) that, at best, the partners of Eng Chuan & Co. were licensees of Lee Siew Pan, (3) that the service of the notice to quit at the premises was valid service and (4) that the defendants who had occupied the premises as licensees of Lee Siew Pan had become trespassers as from March 1, 1976. Having so held he entered judgment for the plaintiffs against all the defendants and the latter were ordered to deliver vacant possession of the premises to the plaintiffs on or before September 15, 1979.

Against this judgment the defendants appealed to the High Court in D.C. Appeal No. 36 of 1979 on the following grounds:—

- I (1) That the learned trial judge erred in law in holding that a tenancy in the name of a partnership firm is vested in the person who is the sole proprietor or the partners at the time the tenancy was created.
(2) That the learned trial judge erred in law in holding that the notice to quit terminated the tenancy in

the name of Eng Chuan & Co.

- (3) That the learned trial judge erred in fact and/or in law in rejecting the defence of the appellants (defendants in the D.C. Summons) with regard to the creation of a tenancy by estoppel in favour of the appellants (in their defence the defendants had not pleaded estoppel).
- (4) The learned trial judge erred in holding that the appellants were unlawfully in possession of the said premises and
- (5) The learned trial judge erred in holding that the appellants were not entitled to the protection of the Control of Rent Ordinance.

On the appeal in the High Court before D'Cotta J., Mr. Smith for the defendants (appellants) contended that as the rents were paid and receipts given in the name of the firm the partners of the firm were entitled to tenancy and cited *South Union Co. Ltd. v. Seng Hin Ltd.*⁽¹⁾ Mr. Kirpal Singh for the respondent (plaintiffs) contended that tenancy of the premises in this case vested in Lee Siew Pan, the sole proprietor of Eng Chuan & Co., at the time of the letting. Further, he contended that the defence of estoppel to be availed of by the defendants should have been, which it was not in this case, expressly pleaded and in any event estoppel could not arise without knowledge on the part of the landlord (which there was not).

The learned appeal judge from the facts "found that the bank purchased the property in 1964 subject to the tenancy of the company whose firm at the relevant time comprised a partnership of 3 persons namely Lee Chay Tian, Lee Chay Kiat and Lee Chay Soon." Further he found that "initially the bank was quite prepared to accept the company as their tenants irrespective of the composition of the company and this they did up till 1975... The attitude of the bank has been such that they did not care or did not even trouble to know who the actual tenant was so long as someone paid the rent. It appears to me that it only dawned on the bank to seek legal advice in 1975 when they wanted to rebuild, whereas if they had been sufficiently diligent they would have made the necessary inquiries when they purchased the premises in 1964. This cannot be held against the company." With respect, we cannot agree that the law casts any such duty or obligation on purchasers of property.

Finally, he went on to say, "In my judgment I find the bank accepted the company as their tenants. In conclusion I find it difficult to accept the submission of counsel for the bank when he described the company as trespassers. In the circumstances I allow the appeal with costs."

There is no evidence that the bank had entered into a new agreement creating a new tenancy in favour of Lee Chay Tian, Lee Chay Kiat and Lee Chay Soon. This being so, the only other way by which these three persons could have become the tenants of the bank would have been by way of a tenancy by estoppel. The defendants (the respondents in this appeal) had not pleaded estoppel at the trial and as this defence was not available to them the learned

appeal judge misdirected himself when he dealt with the appeal as if such a plea had been expressly pleaded by the respondents (defendants).

We therefore cannot agree with the learned appeal judge that the bank had accepted the company (meaning the three partners of Eng Chuan & Co. in 1964) as their tenants.

We allow the appeal with costs here and below. The judgment of the learned District Judge will be restored. Possession of 61, 61A and 61B Chulia Street to be given by the defendants to the plaintiff on or before September 30, 1980.

Appeal allowed.

Solicitors: Kirpal Singh & Co.; L.A.J. Smith.

UNITED OVERSEAS LAND LTD. v. LOKE HONG KEE (S) PTE. LTD.

[C.A. (Wee Chong Jin C.J., Kulasekaram & Chua JJ.)
July 25, 1979]

[Singapore — Civil Appeal No. 59 of 1978]

Arbitration — Case stated — Dispute arising out of written agreement — Supplemental agreement containing proviso for termination — Contract terminated in accordance therewith — Appeal against lower court's decision in allowing review by arbitrator.

Interpretation — Clear and unambiguous term — Court's duty to give effect to it even though oppressive.

This is an appeal against the decision of the High Court ([1979] 1 M.L.J. 108) on a special case stated pursuant to section 28 of the Arbitration Act (Cap. 16). The dispute in this case arose out of a written agreement dated April 8, 1974 between the parties. Under the said agreement, the respondents agreed to carry out and complete certain building works under the supervision and to the satisfaction of the appellants' architect.

By a supplemental agreement of March 23, 1976 made between the parties, the appellants were "at liberty to determine the employment of the respondents under the main contract forthwith by notice in writing" upon the recommendation of the architect in writing should he be of the opinion that the respondent had failed to maintain the progress of works as specified in the schedule to the agreement. On March 1, 1977 the architect, pursuant to the said provisions by a letter to the appellants recommended the determination of employment of the respondents under the main contract. The respondents were not, in his opinion, carrying out the works expeditiously and with every diligence. By a letter of March 1, 1977 the appellants determined the respondents' employment under the main contract forthwith.

Disputes having arisen between the parties, the matter was referred to arbitration before a sole arbitrator. Subsequently the parties agreed that the arbitrator should state certain points of law for the opinion of the High Court. The learned judge held, *inter alia*, that the arbitrator could review or revise an opinion of the architect under the supplemental agreement pursuant to the powers conferred upon him by the main contract.

Article V Clause 6 of the supplemental agreement provides that in the event of a determination of the respondents' employment the firm of Pakatan International Suckling McDonald shall assess the works completed and the valuation of the said Quantity Surveyor shall be binding on the parties and shall be final. The respondents claimed that the said Quantity Surveyor's valuation was too low and sought for a revaluation by the arbitrator under clause 34(3).

The appellants appealed.

Held, allowing the appeal: (1) on a careful consideration of the terms of the supplemental agreement, the intention of